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Workers' Compensation

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Legislative Developments

The 1991 Regular Session of the Louisiana Legislature, at least in the context of workers' compensation, appeared to be the lull before the storm. Assuming that a new gubernatorial term might produce new proposals in the workers' compensation field regardless of the holder of the office, the legislature appeared to be marking time, waiting for that occurrence. Nine different acts altering the Workers' Compensation Act passed, but no one of them could be considered a major change in the Act.

The amendment creating a state-backed insurance pool caused the most public discussion,[1] but its focus is entirely on financial issues for employers and not on legal issues which they face. According to its preamble, the amendment is intended to provide a residual market for those employers who have in good faith, but without success, sought compensation coverage in the voluntary insurance market. The so-called "assigned risk pool" for workers' compensation[2] is discontinued as of September 30, 1992, with the intent that it is to be replaced by the insurance offered by this newly-created Louisiana Workers' Compensation Corporation.[3] The amendment was made subject to voter approval of a constitutional amendment.[4]

In another act,[5] the peculiar procedural concept of a "preliminary judgment" against a compensation defendant who failed to answer timely has been replaced by a default judgment more akin to the normal default judgment outlined in the Code of Civil Procedure. Louisiana Revised Statutes 23:1316 had for years authorized a "preliminary judg-

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1. 1991 La. Acts No. 814, enacting La. R.S. 23:1391-1415 and La. R.S. 22:1047(J)-(L), contingent upon voter approval of a constitutional amendment, which passed as 1991 La. Acts No. 1073.

2. La. R.S. 22:1417(A) (1978 and Supp. 1991).

3. 1991 La. Acts No. 814, enacting La. R.S. 23:1401.

4. Id.

5. 1991 La. Acts No. 731, amending La. R.S. 23:1316 and enacting La. R.S. 23:1316.1.

ment" upon the "simple request" of the petitioner when the petition for workers' compensation had not been timely answered.[6] This "preliminary judgment" would require the payment of weekly benefits[7] until such time as the defendant requested a hearing on the merits. This procedure was unusual and quite effective. The "preliminary judgment" was interlocutory and not appealable,[8] and usually provided the claimant with quite sufficient protection against delay by the defendant. It had recently become unclear, however, whether the device of a default judgment might also be available to the claimant.[9] Act 731 clarifies the situation by repealing the reference to a preliminary judgment and providing for a default judgment procedure not dissimilar to that which one finds in the Code of Civil Procedure in ordinary civil proceedings.[10]

Another enactment of the 1991 Regular Session moves provisions first passed in 1985 from Louisiana Revised Statutes 23:1261 to Louisiana Revised Statutes 23:1021 (the definition section of the Act) without substantive change. These provisions state that when a part-time employee is engaged in successive employments, the employer in whose employ he is injured is the proper compensation defendant, and that the benefits will be based on the average weekly hours which he worked in all of his employment or forty hours, whichever is less.[11] The same act adds a provision to Louisiana Revised Statutes 23:1021 to provide for the definition and calculation of the average weekly wage of a claimant engaged in "seasonal employment."[12]

The remaining enactments are minor procedural changes,[13] technical corrections,[14] or provisions specifically relating to insurance coverages.[15]

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6. La. R.S. 23:1316 (1985) and the comments following.

7. Dubois v. Diamond M. Co., 559 So. 2d 777 (La. App. 3d Cir.), writ denied, 563 So. 2d 866 (1990), held that the preliminary judgment device was not available with regard to medical expenses.

8. Flot v. Transportation Ins. Co., 533 So. 2d 1221 (La. 1988).

9. Compare Auburn County v. Sheraton Hotel, 559 So. 2d 41 (La. App. 4th Cir. 1990) (holding that the preliminary judgment device is not exclusive and that a claimant would be entitled to take and confirm a default judgment if he follows the procedure outlined by the Code of Civil Procedure) with King v. Employers Casualty Co., 515 So. 2d 542 (La. App. 1st Cir. 1987) (indicating that a claimant must pursue the preliminary judgment route rather than the final default judgment device).

10. 1991 La. Acts No. 731, amending La. R.S. 23:1316 and enacting La. R.S. 23:1316.1.

11. 1991 La. Acts No. 565, enacting La. R.S. 23:1021(10)(a)(iv) and repealing La. R.S. 23:1261, which had first been passed in 1985.

12. 1991 La. Acts No. 565, enacting La. R.S. 23:1021(10)(a)(v).

13. 1991 La. Acts No. 468, amending La. R.S. 23:1021(7)(d), makes the reference to the Diagnostic and Statistical Manual of Mental Disorders presented by the American Psychiatric Association, now found in the definition section and applicable in the past only to mental injury caused by physical injury, equally applicable to mental injury caused by mental stress. 1991 La. Acts No. 849, enacting La. R.S. 23:1310.1(D), provides that

Jurisprudence

Employment Status: Independent Contractor Issues

In a series of cases during this term, our courts were required to revisit the issue of whether a particular claimant enjoyed employment status at the time of an injury. In some instances, the question of whether the claimant might be considered an independent contractor not entitled to compensation benefits was paramount.

In *Hanks v. Grey Wolf Drilling Co.*,[16] the third circuit reached the predictable conclusion that a temporarily disabled employee is still an employee. The claimant had suffered a wrist injury and was still convalescing when he was honored at a banquet for five years of service. The awards banquet was at a local club, and he managed to slip and hurt his back during his attendance at the affair. Several days thereafter, benefits for his wrist injury were terminated, and coverage for the banquet back injury was denied. Very predictably, he sued.

The employer contended that the plaintiff was not an "employee" at the time of the back injury, apparently on the basis that he was not actually working at that time. But his name remained on the roll of employees, a premium was paid for his group health insurance, he was invited to the banquet, to which only employees were invited, and, most significantly, his period of convalescence was counted toward the five years of service for which he received an award of a shotgun. The court

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the administrative hearing officers are to be appointed within applicable civil service regulations for five-year terms but are subject to removal for cause. Re-appointment is permitted, but these term provisions are not applicable to hearing officers appointed before the effective date of the Act. 1991 La. Acts No. 892, amending various sections of the Act, specifically provides for the use of medical utilization review procedures and clarifies the procedure for initiating claims and filing answers, bringing the procedure more in line with the procedure for ordinary litigation.

14. 1991 La. Acts No. 469, amending La. R.S. 23:1225(C)(1) restores to that provision some language inadvertently left out of a prior amendment and makes it clear that compensation benefits may be reduced when an employee receives remuneration from other sources such as social security benefits and disability benefits from a plan funded wholly or partially by the employer.

15. 1991 La. Acts No. 13, amending La. R.S. 23:1191, deletes the requirement that those groups of employers who are members of the same bona fide trade or professional association and wish to be self-insured must also be engaged in "the same or similar type of business." 1991 La. Acts No. 1026, enacting subpart H-1 of part I of ch. 10 of Title 23 of the Louisiana Revised Statutes of 1950, comprised of La. R.S. 23:1175-1180, and repealing La. R.S. 22:1415(E), provides for a comprehensive program of health and safety education and training supervised by the Office of Worker's Compensation Administration, in an attempt to reduce occupational accidents and decrease compensation insurance rates for employers in high-rate classifications.

16. 574 So. 2d 531 (La. App. 3d Cir.), writ denied, 577 So. 2d 32 (1991).

concluded that although he was "temporarily absent from his employment duties," he was nonetheless still an employee.

Employment status also arose in *Dye v. Ipik Door Co.*,[17] but in an unusual context. The claimant was a hydraulic engineer employed by the defendant and injured while doing certain repair work on the defendant's premises. He received workers' compensation benefits. One year after his injury, he brought a tort suit against the employer, alleging that he was an independent contractor excluded from compensation benefits rather than an employee. The trial judge felt that independent contractor status had not been established, but held that the claimant was estopped from asserting a tort action because he had accepted compensation benefits, thereby admitting his employment status.

The appellate court disagreed, noting that equitable estoppel is only rarely applied in Louisiana cases. The fifth circuit also observed that the claimant was entitled to proceed in the alternative, and that there was no risk of "double recovery" since the employer would be entitled to a credit for any amounts previously paid in compensation.

The status of the claimant as an independent contractor was the focal point in three other decisions.[18] Much of the discussion would appear to have been unnecessary, since Section 1021(6) of the Act[19] extends coverage even to non-employees if they are independent contractors who spend a substantial part of their work time in manual labor in carrying out the terms of the contract. Thus the actual name given to a laborer, whether employee or independent contractor, is of little moment if the laborer spends a substantial part of his work time in manual labor to fulfill his "independent contract" responsibilities. This concept, dating from 1948, should have, and indeed has in most instances, obviated most of the debate over compensability of injuries to such persons.

Nevertheless, from time to time, the issue still occupies some of the time of the appellate courts. The opinion in *Franklin v. Checker Cab Co.*,[20] in support of its denial of workers' compensation to a cab driver's family following his death in a vehicular accident, repeats a jurisprudential gloss on the concept which is entirely without statutory foundation. The opinion quotes Section 1021(6), paraphrased in the preceding paragraph, and then states that a person may be considered such an independent contractor entitled to benefits only if that language is satisfied *and* the work which he performs "is part of the principal's trade,

17. 570 So. 2d 477 (La. App. 5th Cir. 1990).
18. See infra notes 20, 23, and 25 and accompanying text.
19. La. R.S. 23:1021(6) (1985), defining independent contractor.
20. 572 So. 2d 773 (La. App. 4th Cir. 1990).

business or occupation."[21] This language is not found in Section 1021(6). Finding that Checker Cab was "not in the taxicab business" but only leased "cabs, . . . radio service and goodwill to cab drivers on a daily basis," the court concluded that the work being performed by the deceased driver was not part of the defendant's trade, business or occupation.[22] While common sense is not always a good guide to proper legal results, it does seem strange to conclude that the entity which leases cabs, radio service and goodwill to cab drivers on a daily basis is "not in the taxicab business." If not, what business is it in?

In two other decisions, the result was more predictable, though in each it appears that the outcome should probably have been the same whether the individual was classified as an employee or an independent contractor engaged in manual labor for a substantial portion of the work time in carrying out the contract.

In *Stutes v. Rossclaire Construction, Inc.*,[23] a carpenter who had resigned sued for past due wages; his employer denied his employment status, and alleged the affirmative defense of offset in the amount of the premiums paid for workers' compensation coverage on his behalf. The defendant found in the end that it had pleaded too much. The court held that the carpenter was an employee (though a finding that he was a "working" independent contractor would have accomplished the same purpose), and that accordingly the Act prohibited any payment by him, directly or indirectly, for the cost of compensation.[24] It followed that the offset had to be denied.

Finally, in *Withers v. Timber Products, Inc.*,[25] it was held, consistent with numerous earlier cases, that a hauler of wood chips from a timber mill to a purchaser was an employee and entitled to compensation from the mill, which exercised complete control of the hauling, as well as

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21. Id. at 774. The opinion cites Lushute v. Diesi, 354 So. 2d 179 (La. 1977) and La. R.S. 23:1061 as authority for this statement in addition to La. R.S. 23:1021(6) itself. The latter provision does not contain that language. Section 1061, though it does contain the language about the trade, business or occupation of an individual, concerns the compensation rights of the *employees* of an independent contractor, not the rights of the independent contractor himself. And, the decision in *Lushute* which first added that gloss to the statute did so without persuasive authority, was unduly restrictive when it was decided, and remains so now. See the criticism in W. Malone and H. Johnson, Louisiana Workers' Compensation Law and Practice, in 13 La. Civil Law Treatise } 78 at 145-46 (1980), and especially the prediction in the supplement at note 7 of } 78 that this error would prove particularly troublesome when, as in *Franklin*, the issue was recovery of compensation benefits rather than tort immunity.

22. *Franklin*, 572 So. 2d at 774.

23. 575 So. 2d 466 (La. App. 3d Cir. 1991).

24. La. R.S. 23:1163 (1985).

25. 574 So. 2d 1291 (La. App. 3d Cir.), writ denied, 580 So. 2d 378, reconsideration denied, 581 So. 2d 699 (1991).

"the right to direct when and to whom the wood chips were to be hauled."[26]

Mental Stress

Two decisions during this term demonstrate the inherent difficulty in adjudicating mental disability cases, particularly when there are competing streams of causation, some work-related and some not. On the surface, although the two cases differ only slightly on the facts, different results were reached. Perhaps the full record, not reflected in the appellate opinions, might reveal the reason for the difference in results.

In *Frederick v. Town of Arnaudville*,[27] the claimant had a long and checkered history of employment with the town police department. Some ten years before the incident which produced his compensation claim, he had been shot while in the line of duty. On several occasions thereafter, he had taken a leave of absence "for nerves." On the day in question, he "had words" with his supervisor and one hour later found himself in the emergency room with symptoms mimicking a heart attack. It was diagnosed as "purely an emotional upset," but there appeared to be no dispute that the claimant was thereafter totally disabled. The issue to be resolved was whether there was an "accident." The appellate court agreed with the trial court that there was. Though the court pointed to past mental problems as well as the incident with his supervisor, only the latter was really pertinent to the issue of whether an accident had occurred.[28]

The *Frederick* court noted and specifically distinguished the other decision, in *McDonald v. American General Fire and Casualty Co.*[29] In *McDonald*, there was again an incident on a given day with the claimant's supervisor. There was a history of stress on the worker outside the workplace, including marital and serious financial problems. The trial judge concluded that the claimant had experienced "an every day business occurrence requiring an every day business adjustment."[30] Compensation was denied, and that result was affirmed by the appellate court, which noted that a condition previously chronic had simply been made acute by the confrontation with his supervisor.

There is little here to assist the scholar of workers' compensation law. In each instance, the worker came to the workplace with a predisposition to injury, albeit mental rather than physical. Such a person ordinarily is entitled to compensation if his predisposition combines with

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26. Id. at 1293.
27. 572 So. 2d 316 (La. App. 3d Cir. 1990), writ denied, 575 So. 2d 873 (1991).
28. Id. at 317-19.
29. 570 So. 2d 98 (La. App. 4th Cir. 1990), writ denied, 572 So. 2d 90 (1991).
30. Id. at 100.

a workplace incident to cause disability. But in each instance, the workplace incident was minor and, in an objective sense, should not have resulted in a disabling injury. The difference in result demonstrates vividly how competing employment and non-employment causes can cloud the issues. Both decisions antedate the 1989 amendments to the Act which would have required that the mental injury be demonstrated by "clear and convincing evidence" and be the result of "sudden, unexpected and extraordinary stress."[31] Under that rubric, the successful claim might have failed.

Rehabilitation

Our courts are gradually filling out the concept of rehabilitation introduced into the Act in 1983. Although the Act contains a rather elaborate discussion of rehabilitation services which the employer is required to provide, the practical application of these provisions has remained somewhat unclear. Two decisions during this term shed some light on the issue.

In *Federated Rural Electric v. Simmons*,[32] the employer had instituted a declaratory judgment action seeking to establish that compensation benefits should be reduced because the employee had failed to cooperate with rehabilitation efforts. In the end, the employer's effort was unsuccessful because the court determined that its rehabilitation efforts were more form than substance. The evidence established that the first rehabilitation "expert" had seriously misjudged the claimant's physical situation and his educational background, and as a consequence, had not chosen an appropriate rehabilitation plan. The second "expert" performed a labor market survey from examining the want ads. He never met the claimant and never dealt directly with any prospective employers. It seems clear that these efforts are not of the caliber envisioned by the Act, and it is not surprising that the employer was not successful in its declaratory judgment action.

In the second decision, the persuasiveness of the result is less compelling. In *Vidrine v. Savoy Medical Center, Inc.*,[33] the employer had been ordered to provide rehabilitation services in computer repair training at a private institution for a year. The employer objected on the ground that only twenty-six weeks (with an option to request an additional twenty-six weeks) at a maximum was authorized under the statute, and that objection was determined to be well-founded. It also objected that the use of a private rehabilitation service was authorized only when no public entity offered a similar service. Since a public vocational-technical

31. La. R.S. 23:1021 (7)(b) (1985 and Supp. 1991).
32. 568 So. 2d 644 (La. App. 3d Cir.), writ denied, 571 So. 2d 655 (1990).
33. 576 So. 2d 1181 (La. App. 3d Cir. 1991).

school offered a training course in industrial electronics, the employer thought that such training should have been ordered. The appellate court agreed with the trial judge and rejected the employer's position, but the court's reasoning seems flawed. Essentially, the appellate court concluded that the public program would not supply "appropriate training and education"[34] because that course "did not interest" the claimant.[35] With all respect, while the claimant's cooperation is no doubt important, one can hardly expect rehabilitation services to be precisely what the claimant would prefer. If the claimant effectively has a veto power over rehabilitation services offered to him, there is significant potential for abuse.

Intentional Tort Exclusion

Our courts have shown themselves to be very appropriately dubious of claims of intentional tort in the workplace, and of the concomitant attempted escape into the tort system. While no one approves of permitting an intentional wrongdoer to hide behind the immunity afforded by the Act, there is serious danger of undermining the Act by broadly defining what constitutes an intentional tort for these purposes.

Despite the fact that the courts have been suitably narrow in their interpretations, the effort to widen the exception seems to be endless. During this term alone, there were at least a dozen decisions dealing with the issue,[36] and with one exception, the claimant was unsuccessful

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34. Id. at 1182, quoting from La. R.S. 23:1226(A).

35. Id. at 1182.

36. Fricke v. Owens-Corning Fiberglas Corp., 571 So. 2d 130 (La. 1990) (summary judgment reinstated and affirmed by supreme court; supervisor did not commit intentional tort in acquiescing in employee's descent into tank to rescue another worker who had been overcome by toxic mustard vapors); Van Alton v. Fisk Electric, Inc., 581 So. 2d 1080 (La. App. 4th Cir. 1991) (two different summary judgments in defendants' favor reversed by appellate courts; after full trial, judgment in defendants' favor affirmed; no showing of intentional tort when co-employee handed voltage meter to plaintiff during electrical repair and both were injured); King v. Schuylkill Metals Corp., 581 So. 2d 300 (La. App. 1st Cir.), writ denied, 584 So. 2d 1163 (1991) (summary judgment in defendant's favor affirmed; cleaning of screw conveyor without shutting off power upon instruction of supervisor did not establish intentional tort); Mathew v. Aetna Casualty and Sur. Co., 578 So. 2d 242 (La. App. 3d Cir. 1991) (summary judgment in defendants' favor affirmed; failure to provide safety nets not an intentional tort); Cousineau v. Johnson, 577 So. 2d 152 (La. App. 1st Cir.), writ denied, 580 So. 2d 379 (1991) (attack by co-employee in bunkhouse was an intentional tort but so outside the employment that employer was not vicariously liable); Hudson v. Boh Bros. Construction Co., 573 So. 2d 1284 (La. App. 4th Cir. 1991) (directed verdict in defendants' favor affirmed; fall in hole in trailer bed of 18-wheeler not an intentional tort); Hurst v. Massey, 570 So. 2d 560 (La. App. 4th Cir. 1990), writ denied, 573 So. 2d 1123 (1991) (after trial on second remand, rejection of intentional tort claim was affirmed where plant officials could not have known that,

in establishing liability on the part of the employer. In many instances, the matter was dealt with by summary judgment or even peremptory exception. Too much time is being spent by too many on spurious claims of intentional tort. There are other problems in the Act which should be occupying judicial time.

Indemnity of Tortfeasor by Employer

Decisions during this term confirm that an employer who would otherwise be immune from the payment of tort damages may contractually agree to assume that risk from a person or entity who might ultimately be cast for tort damages in a suit by an employee of that employer. In *Yocum v. City of Minden*,[37] for example, it was held that there was no prohibition in the Act against an indemnity agreement calling for the employer to hold an alleged tortfeasor harmless with respect to a suit by the employer's employee, but the issues of fact precluded a determination of the scope of that indemnity by summary judgment. Similarly in *Berninger v. Georgia-Pacific Corp.*,[38] the court held that an indemnity agreement was enforceable, and that a claim against the indemnitor may be made by third-party demand during the pendency of the tort litigation.

In certain instances, the injured employee himself might become the indemnitor as to a part of the obligation, as in the situation in which he settles the tort claim and agrees to indemnify the tortfeasor against any remaining claims of his own employer.[39]

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as a result of their actions, co-worker would be fatally shot by striking union member); Mahfouz v. J.A.C.E. Oilfield Sales and Serv., Inc., 569 So. 2d 1074 (La. App. 3d Cir. 1990) (summary judgment in employer's favor affirmed; allegation that employer knew of pre-existing back condition following employment physical but failed to reveal limitations imposed by it to employee insufficient to establish intentional tort); Gray v. McInnis Bros. Constr., Inc., 569 So. 2d 656 (La. App. 2d Cir. 1990) (summary judgment in employer's favor affirmed; injury from falling scaffolding after employer ordered removal of guardrails not an intentional tort); Dycus v. Martin Marietta Corp., 568 So. 2d 592 (La. App. 4th Cir.), writ denied, 571 So. 2d 649 (1990) (summary judgment in employer's favor affirmed; shock from apparent wiring problem in welding machine insufficient to establish intentional tort); Bonin v. Bon Elec. Contractors, Inc., 567 So. 2d 766 (La. App. 3d Cir. 1990) (summary judgment in employer's favor affirmed; injury when worker's foot was caught in cable and he was hoisted up the elevator shaft not an intentional tort). The only exception was Wallace v. Kaiser Aluminum & Chem., 586 So. 2d 149 (La. 1991), in which the supreme court reversed the sustaining of an exception of no cause of action.

37. 566 So. 2d 1082 (La. App. 2d Cir. 1990).

38. 582 So. 2d 266 (La. App. 1st Cir. 1991).

39. See Hermann v. Dockside Linemen, Inc., 583 So. 2d 17 (La. App. 4th Cir. 1991).

Rights Upon Settlement

The rights of the various parties upon settlement of a tort claim continue to be the source of litigation. The teaching of the cases reported during this term is consistent with that of prior decisions: a compensation payor who wishes to be reimbursed would do well to intervene and participate vigorously in the employee's tort action. In *Rice v. Flour Constructors, Inc.*,[40] the intervening compensation carrier did not participate actively in the liability phase of the trial of the tort actions and actually voluntarily dismissed its intervention in the claim at issue. After that claimant had received payment of the tort judgment in his favor, he pressed his compensation claim and resisted the effort of the compensation carrier to take a credit against the compensation obligation in the amount of the tort judgment. The appellate court reversed the trial court and refused to permit the credit on the ground that the carrier had intervened but then voluntarily dismissed its intervention, thus failing to prove its right to reimbursement.

In *St. Paul Fire & Marine Insurance Co. v. Whitmire*,[41] the alleged tortfeasor had settled the employee's tort claim prior to suit actually being filed and without any notice that the employee might be entitled to compensation or might actually be drawing compensation. In fact, compensation benefits had been paid, but when the compensation carrier invoked Section 1102[42] in an attempt to receive reimbursement from the settling tortfeasor, its effort was rebuffed. The appellate court was unwilling to put the risk of non-notice on the settling tortfeasor as opposed to the compensation carrier, which does not seem inappropriate since it is the compensation carrier which has paid the benefits and seeks their reimbursement. A concurring judge suggested legislative correction in this situation to require a settling tortfeasor to furnish proof that a bona fide effort was made to determine whether a compensation claim was involved.

Another piece of the puzzle was faced in *Durham Pontiac-Cadillac-GMC Trucks, Inc. v. Phillips*.[43] The employer had been cast in judgment for workers' compensation benefits, but had no knowledge of a tort action which was pending. Subsequently, that tort action was settled, and the employee obtained a rather substantial sum. When the employee sought to enforce his compensation judgment despite the tort recovery,

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40. 577 So. 2d 1054 (La. App. 4th Cir. 1991). The defendant's name should probably have been Fluor, but the spelling is consistent throughout the opinion.

41. 578 So. 2d 1180 (La. App. 5th Cir.), writ denied, 581 So. 2d 707 (1991).

42. La. R.S. 23:1102(C) (1985), which provides that a tortfeasor will owe reimbursement to a compensation carrier for compensation benefits paid when the tortfeasor settles the employee's tort claim without the written approval of the compensation carrier.

43. 572 So. 2d 1080 (La. App. 1st Cir. 1990).

the employer brought suit against the employee (not the tortfeasor) for a declaratory judgment that the tort settlement confected without its knowledge satisfied its compensation obligation. The appellate court upheld the suit against an exception of no cause of action.

Miscellaneous

There are a few additional decisions worthy of a brief mention. In *Sampson v. Wendy's Management, Inc.*,[44] the supreme court, reversing the second circuit's holding that a claim for damages due to retaliatory discharge under Section 1361[45] is properly considered a workers' compensation matter and thus is properly filed with the Office of Workers' Compensation Administration as are all other workers' compensation claims, concluded that the action was delictual in nature and should be filed with the district court. This seems short-sighted. The action is not a separate tort action; rather, it is a method of assuring that benefits under the Act are payable in appropriate cases without improper punishment of an employee for asserting his rights.

In *Aetna Casualty and Surety Co. v. Landry*,[46] the court refused to permit reimbursement of a compensation carrier which had erroneously paid the $20,000.00 death benefit to the mother of a deceased employee on the belief that the employee had died without dependents. It turned out that he did have dependents—an illegitimate child and the child's mother. The insurer had settled their claim and then sought recovery of the originally-paid death benefit from the mother. The court predictably held that the payment to the mother was a compromise,

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44. 1992 WL 10096, 1992 La. LEXIS 100 (La. 1992) (No. 91-CC-1281), rev'g, 580 So. 2d 430 (La. App. 2d Cir. 1991).

45. La. R.S. 23:1361 (1985) as cited in *Sampson*, 580 So. 2d at 432, quoting from W. Malone and H. Johnson, Workers' Compensation Law and Practice § 362.5 in 14 La. Civil Law Treatise (2d ed. 1980); Johnson, Worker's Compensation, Developments in the Law, 1985-1986, 47 La. L. Rev. 521 (1987). But see Maquar v. Transit Management of Southeast La., 580 So. 2d 1128 (La. App. 4th Cir.), writ granted, 584 So. 2d 662 (1991), where the court held that prescription running against a claim for damages for retaliatory discharge is not interrupted by a filing with the Office of Workers' Compensation, but only by filing in a "court of competent jurisdiction." *Maquar*, id. at 1129. This anomaly is particularly troublesome now that district courts no longer have any jurisdiction over workers' compensation matters at all, with claims proceeding directly from administrative hearing officers to the appropriate courts of appeal. It makes little sense for district courts to be hearing claims for damages arising from discharge as a result of filing a compensation claim, when they do not have jurisdiction to deal with compensation claims at all. If legislation is required, it should be enacted. But it is just as easy to state clearly that the cause of action under Section 1361 is a compensation matter as much as the claim itself and to hold that it should be initiated by a filing with the OWCA for hearing by an administrative hearing officer.

46. 578 So. 2d 537 (La. App. 3d Cir. 1991).

and that such a compromise could not be rescinded on the basis of an error of law.

The issue of reimbursement of a compensation carrier from an uninsured motorist policy was faced during this term in two different factual contexts. In one case, the employee in question was driving a rental vehicle at the time of the work-related accident, and that vehicle was insured for uninsured motorist coverage as well as other coverages.[47] The cost of that vehicle was being paid by her own insurer under a clause requiring such payment while her own vehicle was being repaired due to an earlier accident. Accordingly, the employee argued that under established authority[48] she had indirectly paid the cost of the uninsured motorist coverage on the rental vehicle by paying premiums to her own insurer, and thus the compensation carrier which had paid compensation benefits to her should not be entitled to reimbursement against the uninsured motorist coverage. The appellate court agreed, reversing the trial court.

In a second case, the employee could not demonstrate that she had borne the cost of uninsured motorist coverage, even indirectly, and thus had no ground to complain that her employer was entitled to reimbursement from an uninsured motorist award to plaintiff without any credit for her employer's self-insured retention limit.[49]

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47. Townsend v. Ford Motor Co., Inc., 569 So. 2d 238 (La. App. 1st Cir. 1990), writ denied, 572 So. 2d 72 (1991).

48. Johnson v. Fireman's Fund Ins. Co., 425 So. 2d 224 (La. 1982).

49. Desormeaux v. Lalonde, 578 So. 2d 226 (La. App. 3d Cir.), writ denied, 581 So. 2d 705 (1991).